

07 CV 6292

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKIN RE LOWER MANHATTAN DISASTER SITE
LITIGATION

MARIA I DUQUE AND ARCESIO CUELLAR

Plaintiffs,

- against -

(SEE SECTION IV., PARTIES, WITHIN)

Defendants.

21 MC 102 (AKH)

DOCKET NO.
COMPLAINT BY ADOPTION
(CHECK-OFF COMPLAINT)
RELATED TO THE
MASTER COMPLAINTPLAINTIFF(S) DEMAND A
TRIAL BY JURY

JUL 09 2007

U.S.D.C. S.D.N.Y.
CASHIERS

By Case Management Order Number 3, of the Honorable Alvin K. Hellerstein, United States District Judge, dated March 21, 2007, ("the Order"), a Master Complaint for all Plaintiffs is to be filed by June 1, 2007. In conjunction with said filing, the within pro-forma Complaint by Adoption (Check-Off) Complaint is also to be filed by June 1, 2007.

I.

INTRODUCTION
NOTICE OF ADOPTION

A Plaintiff-Specific Complaint by Adoption (Check-Off Complaint), in the within format, is to be filed by each Plaintiff, and to be utilized and read in conjunction with the Master Complaint on file with the Court. Where applicable to the instant Plaintiff(s), specific paragraphs are to be marked with an "☒," and specific case information is to be set forth, inserting said information in the blank space, if provided. If Plaintiff wishes to assert additional allegations, such may be done by annexing separate labeled Riders, maintaining the same section headings and checking the "Other" box in the appropriate section of the Check-Off complaint.

Plaintiffs, as captioned above, by his/her/their attorneys, complaining of Defendant(s), respectfully allege:

- 1. All headings, paragraphs, allegations and Causes of Action in the entire Master Complaint are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein, in addition to those paragraphs specific to the individual Plaintiff(s), which are included below or annexed in a rider.
- 2. Plaintiffs adopt those allegations as set forth in the Master Complaint Section I, Introduction Notice of Adoption.

II.

JURISDICTION

- 3. Plaintiffs adopt those allegations as set forth in the Master Complaint Section II, Jurisdiction.
- 4. The Court's jurisdiction over the subject matter of this action is: Founded upon Federal Question Jurisdiction specifically
 - 4A. Air Transport Safety & System Stabilization Act of 2001, (or)
 - 4B. Federal Officers Jurisdiction, (or)
 - 4C. Other if an individual plaintiff is alleging a basis of jurisdiction not stated above, plaintiff should check this box, and attach a Rider. Individual plaintiff should then immediately notify Plaintiff Liaison by email and in writing, and request an amendment to the Master Pleadings and the Check-Off Complaint pursuant to the applicable CMO governing said amendment. (if checked attach Rider)
- 4D. Contested, but the Court has already determined that it has removal jurisdiction over this action, pursuant to 28 U.S.C. § 1441.

III.

VENUE

- 5. Plaintiffs adopt those allegations as set forth in the Master Complaint Section III, Venue.

IV.

PARTIES

6. Plaintiffs adopt those allegations as set forth in the Master Complaint Section IV, Parties.

7. THE INJURED PLAINTIFF'S NAME IS (referencing the individual specifically injured/deceased, hereinafter referred to as "Decedent Plaintiff"): MARIA I DUQUE

8. THE INJURED PLAINTIFF'S ADDRESS IS: 88-11 34th Avenue, Apt. #6E, Jackson Heights, NY, 11372.

9. THE REPRESENTATIVE PLAINTIFF'S NAME IS (if "Injured Plaintiff" is deceased): _____ (hereinafter referred to as the "Representative Plaintiff")

10. THE REPRESENTATIVE PLAINTIFF'S ADDRESS IS (if "Injured Plaintiff" is deceased): _____

11. THE REPRESENTATIVE PLAINTIFF (if "Injured Plaintiff" is deceased) was appointed as Administrator of the Goods, Chattels and Credits which were of the "Injured Plaintiff" on _____, by the Surrogate Court, County of _____, State of New York.

12. THE REPRESENTATIVE PLAINTIFF (if "Injured Plaintiff" is deceased) was appointed as Executor of the Estate of the "Injured Plaintiff" on _____, by the Surrogate Court, County of _____, State of New York.

13. THE DERIVATIVE PLAINTIFF'S NAME: (hereinafter referred to as the "Derivative Plaintiff" and if deceased, hereinafter referred to as "Decedent Derivative Plaintiff") Arcesio Cuellar

14. THE DERIVATIVE PLAINTIFF'S ADDRESS: 88-11 34th Avenue, Apt. #6E, Jackson Heights, NY, 11372

15. THE REPRESENTATIVE DERIVATIVE PLAINTIFF'S NAME: (if "Derivative Plaintiff" is deceased) _____

16. THE REPRESENTATIVE PLAINTIFF'S DERIVATIVE ADDRESS (if "Derivative Plaintiff" is deceased): _____

17. THE REPRESENTATIVE DERIVATIVE PLAINTIFF was appointed as Administrator of the Goods, Chattels and Credits which were of the ‘Derivative Plaintiff’ on _____, by the Surrogate Court, County of _____, State of New York.

18. THE REPRESENTATIVE DERIVATIVE PLAINTIFF was appointed as Executor of the Estate of the ‘Derivative Plaintiff’ on _____, by the Surrogate Court, County of _____, State of New York.

19. Injured Plaintiff, as aforementioned, is an individual and a resident of the State of New York residing at the aforementioned address.

20. Injured Plaintiff, as aforementioned, is an individual and a resident of (if other than New York) _____, and resides at the aforementioned address.

21. Representative Plaintiff, as aforementioned, is a resident of the State of New York, residing at the aforementioned address.

22. Representative Plaintiff, as aforementioned, is an individual and a resident of (if other than New York) _____, and resides at the aforementioned address.

23. Representative Plaintiff, as aforementioned, brings this claim in his/her representative capacity, as aforementioned on behalf of the Estate of the Decedent Plaintiff.

24. Derivative Plaintiff, as aforementioned, is a resident of the State of New York, residing at the aforementioned address.

25. Derivative Plaintiff, as aforementioned, is an individual and a resident of (if other than New York) _____, and resides at the aforementioned address.

26. Representative Derivative Plaintiff, as aforementioned, is a resident of the State of New York, residing at the aforementioned address.

27. Representative Derivative Plaintiff, as aforementioned, is an individual and a resident of (if other than New York) _____, and resides at the aforementioned address.

28. Representative Derivative Plaintiff, as aforementioned, brings this claim in his/her representative capacity, as aforementioned, on behalf of the Estate of the Derivative Plaintiff.

29. The Derivative Plaintiff and or the Representative Derivative Plaintiff in his or her representative capacity on behalf of the estate of the Decedent Derivative Plaintiff was the:

a. SPOUSE at all relevant times herein, was lawfully married to Plaintiff, and brings this derivative action for her/his loss due to the injuries sustained by her husband/his wife, Injured Plaintiff.

b. Other: (If checked, attach Rider)

Instructions: To the extent that plaintiff has specificity as to the area within the building/location listed, such should be indicated on a separate line. If plaintiff is unable at this time to enunciate such specificity at this time, the applicable column should be marked with an "☒" (See Sample Chart below)

Each sub-paragraph shall be deemed to allege: "The Injured Plaintiff at times relevant to the claims herein, worked at (address/location) for the following (dates of employment), while in the employ of (name of employer), maintaining the position of (job title) and worked at said location for approximately (hours).i.e. The Injured Plaintiff at times relevant to the claims herein, worked at 500 Broadway, for the following dates, 10/1/01-6/1/02, while in the employ of ABC Corp, maintaining the position of cleaner and worked at said location for approximately 20 hours.

30. The Injured Plaintiff worked at the address/location for following dates of employment, for the employer, in the job title of, and for the number of hours, as specified below.

Sample Chart

	ADDRESS/ LOCATION	NON- SPECIFIC LOCATION	DATES OF EMPLOYMENT	NAME OF EMPLOYER	JOB TITLE	HOURS WORKED	Percent Of Total
<input checked="" type="checkbox"/> 30a	*500 Broadway	X	10/1/01-6/1/02	ABC CORP.	CLEANER	20	50
<input checked="" type="checkbox"/> 30b	1600 Broadway (lobby)		11/1/01-11/15/01	ABC CORP.	CLEANER	10	25

<input checked="" type="checkbox"/>	30c	1600 Broadway Fl 10-15	12/15/01- 12/16/01	XYZ Corp.	CLEANER	10	25
Total Hours Worked: 40							

		ADDRESS/LOCATION	DATES OF EMPLOYMENT	NAME OF EMPLOYER	JOB TITLE	HOURS WORKED	Percent Of Total
<input checked="" type="checkbox"/>	30a.	100 Gateway Plaza	09/11/2001-03/28/2002	Maxons Restoration, Inc.	Cleaning	1584	14%
<input checked="" type="checkbox"/>	30b.	140 Broadway	09/11/2001-03/28/2002			1584	14%
<input checked="" type="checkbox"/>	30c.	200 Gateway Plaza	09/11/2001-03/28/2002	Same As Above	Same As Above	1584	14%
<input checked="" type="checkbox"/>	30d.	400 Gateway Plaza	09/11/2001-03/28/2002	Same As Above	Same As Above	1584	14%
<input checked="" type="checkbox"/>	30e.	500 Gateway Plaza	09/11/2001-03/28/2002	Same As Above	Same As Above	1584	14%
<input checked="" type="checkbox"/>	30f.	Century 21	09/11/2001-03/28/2002	Same As Above	Same As Above	1584	14%
<input checked="" type="checkbox"/>	30g.	Trinity Church		Same As Above	Same As Above	1584	14%
<input type="checkbox"/>	30h.			Same As Above	Same As Above	-----	-----
<input type="checkbox"/>	30i.						
<input type="checkbox"/>	30j.						
<input type="checkbox"/>	30k.						
<input type="checkbox"/>	30l.						
<input type="checkbox"/>	30m.						
<input type="checkbox"/>	30n.						
<input type="checkbox"/>	30o.						
<input type="checkbox"/>	30p.						
<input type="checkbox"/>	30q.						
<input type="checkbox"/>	30r.						
<input type="checkbox"/>	30s.						

Other (if checked, attach Rider and continue with same format for sub-divisions)

The plaintiff worked for the total number of hours as indicated below:

30t.

Total Hours Worked: 11088

31. The Injured Plaintiff was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above, unless otherwise specified.

32. The Injured Plaintiff was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above, unless otherwise specified

33. The Injured Plaintiff was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above, unless otherwise specified

Other: (if checked, attach Rider)

34. The Plaintiff, and/or if also applicable to derivative plaintiff also, check here , or his/her representative, has not made a claim to the Victim Compensation Fund. Therefore, pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. 40101, the issue of waiver is inapplicable.

35. The Plaintiff and/or if also applicable to derivative plaintiff also, check here , or his/her representative, has made a claim to the Victim Compensation Fund, which claim was not deemed "substantially complete." The plaintiff therefore has not waived the "right to file a civil action (or be party to an action) in any Federal or State court for damages sustained as a result of the terrorist aircraft crashes of September 11,2001, except for civil actions to recover collateral source obligations." 49 U.S.C. 40101 at § 405 (c)(3)(B).

36. The allegations in the body of the Master Complaint, and any additional allegations made in this Plaintiff-Specific Complaint by Adoption, are asserted as against each defendant as checked off below and/or/as added to a Rider to this Plaintiff-Specific Complaint by Adoption, in the same format as appears herein, with any additional allegations as are deemed appropriate.

37. The specific Defendants alleged relationship to the property, as indicated below or as otherwise the evidence may disclose, or their role with relationship to the work thereat, gives rise to liability under the causes of actions alleged, as referenced in the Master Complaint.

Instruction: The Defendant(s) names in the Master Complaint are re-stated below. The Defendant's are listed by reference to the building and/or location at which this specific plaintiff alleges to have worked. . Each sub- paragraph shall be deemed to allege: "With reference to (address), the defendant (entity) was a and/or the (relationship) of and/or at the subject property and/or in such relationship as the evidence may disclose," (i.e. With reference to 4 Albany Street, defendant Bankers Trust Company, was the owner of the subject project and/or in such relationship as the evidence may disclose)

38. With reference to (address as checked below), the defendant (entity as checked below) was a and/or the (relationship as indicated below) of and/or at the subject property and/or in such relationship as the evidence may disclose.

(38-14) 140 BROADWAY

- A. MSDW 140 BROADWAY PROPERTY L.L.C. (OWNER)

(38-31) 22 CORTLANDT STREET (CENTURY 21)

- A. MAYORE ESTATES LLC (OWNER)
- B. 80 LAFAYETTE ASSOCIATES, LLC (OWNER)
- C. MAYORE ESTATES LLC AND 80 LAFAYETTE ASSOCIATION LLC AS TENANTS IN COMMON (OWNER)
- D. BLUE MILLENNIUM REALTY LLC (OWNER)
- E. CENTURY 21, INC. (OWNER)
- F. B.R. FRIES & ASSOCIATES, INC. (AGENT)
- G. STONER AND COMPANY, INC. (AGENT)
- H. HILLMAN ENVIRONMENTAL GROUP, LLC. (AGENT/CONTRACTOR)
- I. GRUBB & ELLIS MANAGEMENT SERVICES (AGENT)

(38-69) 345 SOUTH END AVENUE (100 GATEWAY PLAZA)

- A. EMPIRE STATE PROPERTIES, INC. (OWNER)
- B. LEFRAK ORGANIZATION INC. (OWNER)

(38-70) 355 SOUTH END AVENUE (200 GATEWAY PLAZA)

- A. EMPIRE STATE PROPERTIES, INC. (OWNER)
- B. LEFRAK ORGANIZATION INC. (OWNER)

(38-72) 385 SOUTH END AVENUE (500 GATEWAY PLAZA) (OWNER)

- A. EMPIRE STATE PROPERTIES, INC. (OWNER)
- B. LEFRAK ORGANIZATION INC. (OWNER)

(38-73) 395 SOUTH END AVENUE (400 GATEWAY PLAZA)

- A. THE CITY OF NEW YORK (OWNER)
- B. BATTERY PARK CITY AUTHORITY (OWNER)
- C. HUDSON TOWERS HOUSING CO., INC. (OWNER)
- D. EMPIRE STATE PROPERTIES, INC. (OWNER)
- E. LEFRAK ORGANIZATION, INC. (OWNER)

(38-154) TRINITY CHURCH

- A. RECTOR OF TRINITY CHURCH (OWNER)

OTHER: if an individual plaintiff is alleging injury sustained at a building/location other than as above, and/or if an individual plaintiff is alleging an injury sustained at a building/location above, but is alleging a claim against a defendant not listed for said building, plaintiff should check this box, and attach a Rider. Individual plaintiff should then immediately notify Plaintiff Liaison by email and in writing, and request an amendment to the Master Pleadings and the Check-Off Complaint pursuant to the applicable CMO governing said amendment.

V – VIII.

CAUSES OF ACTION

39. Plaintiffs adopt those allegations as set forth in the Master Complaint Section V-VIII, Causes of Action.

40. Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

- 40 A. Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including § 200
- 40 B. Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6)
- 40 C. Pursuant to New York General Municipal Law §205-a
- 40 D. Pursuant to New York General Municipal Law §205-e
- 40 E. Common Law Negligence
- 40 F. Wrongful Death
- 40 G. Loss of Services/Loss of Consortium for Derivative Plaintiff
- 40 H. Other: if an individual plaintiff is alleging an additional cause of action or additional substantive law or theory of law upon which his/her claim is based, other than as appears in this section, plaintiff should check this box, and attach a Rider. Individual plaintiff should then immediately notify Plaintiff Liaison by email and in writing, and request an amendment to the Master Pleadings and the Check-Off Complaint pursuant to the applicable CMO governing said amendment. (if checked, attach Rider)

41. As to the following municipal entities or public authorities, a Notice of Claim pursuant to the applicable statutes as referenced within the Master Complaint, has been timely served on the following dates.

Name of Municipal Entity or Public Authority	Date Notice of Claim Served

OTHER: If a Notice of Claim was filed against additional entities check box and attach rider
 42. As to certain municipal entities or public authorities, if specified as defendants herein, with reference to the service of a Notice of Claim: an application has been made to the _____, as to: _____

42A. to deem Plaintiff's (Plaintiffs') Notice of Claim timely filed, or in the alternative to grant Plaintiff(s) leave to file a late Notice of Claim *Nunc Pro Tunc*, and for leave to file a late Notice of Claim *Nunc Pro Tunc* has been filed and:

42B. a determination is pending
 42C. an Order granting petition was made on: _____
 42D. an Order denying petition was made on: _____

43. As a direct and proximate result of defendant's culpable actions in the clean-up, construction, demolition, excavation, and/or repair operations and all work performed at the premises, the Injured Plaintiff sustained the following injuries including, but not limited to:

Abdominal

Abdominal Pain

43-1 Date of onset: _____ Date physician first connected this injury to WTC work: _____

Cancer

Fear of Cancer

43-2 Date of onset: 7/21/2004 Date physician first connected this injury to WTC work: To Be Supplied

43-3 Tumor (of the Brain)
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-4 Leukemia
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-5 Lung Cancer
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-6 Lymphoma
Date of onset: _____
Date physician first connected this injury to WTC work: _____

Circulatory

43-7 Hypertension
Date of onset: _____
Date physician first connected this injury to WTC work: _____

Death

43-8 Death:
Date of death: _____
If autopsy performed, date _____

Digestive

43-9 Gastric Reflux
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-10 Indigestion
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-11 Nausea
Date of onset: _____
Date physician first connected this injury to WTC work: _____

Pulmonary

43-12 Asthma
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-13 Chronic Obstructive Lung Disease
Date of onset: _____
Date physician first connected this injury to WTC work: _____

43-14 Chronic Restrictive Lung Disease

Date of onset: To Be Supplied

Date physician first connected this injury to WTC work: To Be Supplied

Chronic Bronchitis

43-15

Date of onset: _____

Date physician first connected this injury to WTC work: _____

Chronic Cough

43-16

Date of onset: 7/21/2004

Date physician first connected this injury to WTC work: To Be Supplied

Pulmonary Fibrosis

43-17

Date of onset: _____

Date physician first connected this injury to WTC work: _____

Pulmonary Nodules

43-18

Date of onset: _____

Date physician first connected this injury to WTC work: _____

Shortness of Breath

43-19

Date of onset: To Be Supplied

Date physician first connected this injury to WTC work: To Be Supplied

Sinusitis

43-20

Date of onset: To Be Supplied

Date physician first connected this injury to WTC work: To Be Supplied

Skin

Burns

43-21

Date of onset: _____

Date physician first connected this injury to WTC work: _____

Dermatitis

43-22

Date of onset: _____

Date physician first connected this injury to WTC work: _____

Sleep Disorder

Insomnia

43-23

Date of onset: To Be Supplied

Date physician first connected this injury to WTC work: To Be Supplied

Other

Other: Chest Pain; and Chronic Headaches

43-24

Date of onset: To Be Supplied

Date physician first connected this injury to WTC work: To Be Supplied

If additional injuries are alleged, check here and attach Rider continuing with the same format for sub-paragraphs

44. As a direct and proximate result of the injuries identified above the Injured Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

- 44 A. Pain and suffering
- 44 B. Death
- 44 C. Loss of the pleasures of life
- 44 D. Loss of earnings and/or impairment of earning capacity
- 44 E. Loss of retirement benefits/diminution of retirement benefits
- 44 F. Expenses for medical care, treatment, and rehabilitation
- 44 G. Mental anguish
- 44 H. Disabilities
- 44 I. Medical monitoring
- OTHER (IF CHECKED ATTACH RIDER)

45. As a direct and proximate result of the injuries described *supra*, the Derivative plaintiff(s), have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate, and or as is otherwise alleged.

IX.

PRAYER FOR RELIEF

46. Plaintiffs adopt those allegations as set forth in the Master Complaint Section IX., Prayer for Relief.

OTHER: Check this box if plaintiff asserts Relief other than as stated in the Master Complaint, and attach a Rider. If plaintiff asserts monetary relief in amounts other than stated in the Master Complaint, this Rider shall supplant those amounts for said plaintiff.

X.

JURY TRIAL DEMAND

47. Plaintiffs adopt those allegations as set forth in the Master Complaint Section X, Jury Trial Demand.

CHECK APPROPRIATE BOX /BOXES BELOW IF RIDER ANNEXED

OTHER ALLEGATIONS: Check this box if additional allegations are added to this Check-Off Complaint in a Rider. All such additional allegations shall be annexed to this document and titled Rider to Check-Off Complaint and shall reference Plaintiff's name and case number, maintaining the same section headings, and format as appear herein.

OTHER DEFENDANTS OR OTHER LOCATIONS/BUILDINGS: Check this box if additional defendants and/or additional locations/building have been added. **If checking this box, check "OTHER ALLEGATIONS", as well.**

WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

Dated: New York, New York
July 9, 2007

Yours, etc.



By: Christopher R. LoPalo (CL 6466)
Worby Groner Edelman & Napoli Bern, LLP
Attorneys for Plaintiffs
115 Broadway 12th Floor
New York, NY 10006
Tel: (212) 267-3700
Fax: (212) 587-0031

ATTORNEY VERIFICATION

CHRISTOPHER R. LOPALO, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing SUMMONS AND VERIFIED COMPLAINT and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiff's attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

DATED: New York, New York
July 9, 2007



CHRISTOPHER R. LOPALO

Docket No:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Maria I Duque (and Husband, Arcesio Cuellar),

Plaintiff(s)

- against -

SEE ATTACHED RIDER.,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Attorneys for: Plaintiff(s)

Office and Post Office Address, Telephone

115 Broadway - 12th Floor

New York, New York 10006

(212) 267-3700

To
Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated,

Attorney(s) for

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of an
duly entered in the office of the clerk of the within named court on 20

NOTICE OF SETTLEMENT

that an order _____ of which the within is a true copy
will be presented for settlement to the HON. _____ one of the
judges of the
within named Court, at
on 20 _____ at _____ M.
Dated,

Yours, etc.,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP
